No. 22-CV-0274/22-CV-0301

DISTRICT OF COLUMBIA COURT OF APPEALS

Felicia M. Sonmez,

Appellant/Cross-Appellee,

v.

WP Company LLC et al.,

Appellees/Cross-Appellants.

On Appeal from a Final Judgment of the
Superior Court of the District of Columbia, Civil Division
Case No. 2021 CA 002497 B, Judge Anthony C. Epstein

CORRECTED OPENING BRIEF FOR APPELLANT/CROSS-APPELLEE FELICIA SONMEZ

Molly Bernstein
Elliott O'Brien
Jewelle Vernon
Student Counsel

Madeline Meth*
Brian Wolfman
Esthena L. Barlow
GEORGETOWN LAW APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave., NW,
Suite 312
Washington, D.C. 20001
(202) 662-9549

Counsel for Appellant/Cross-Appellee Felicia Sonmez

October 14, 2022

*Counsel to present oral argument

Rule 28(a)(2)(A) Statement

The parties are plaintiff-appellant/cross-appellee Felicia Sonmez and defendants-appellees/cross-appellants the Washington Post, Martin Baron, Cameron Barr, Steven Ginsberg, Tracy Grant, Lori Montgomery, and Peter Wallsten. In the Superior Court, Sundeep Hora of Alderman, Devorsetz & Hora PLLC represented Sonmez, and Jacqueline M. Holmes, Yaakov M. Roth, and Joseph P. Falvey of Jones Day represented defendants. On appeal, the same counsel remain for defendants, and Sonmez is represented by Madeline Meth, Brian Wolfman, and Esthena L. Barlow of the Georgetown Law Appellate Courts Immersion Clinic, along with student counsel Molly Bernstein, Elliott O'Brien, and Jewelle Vernon.

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Introduction

Thirteen weeks into her job as a breaking political news reporter at the Washington Post, Felicia Sonmez had written thirteen front-page stories and published more than one hundred others, including several about sexual misconduct and the #MeToo movement. As she did her job, she participated in another newspaper's internal investigation of a man who sexually assaulted her a year earlier in Beijing.

When sexual-assault allegations against Brett Kavanaugh surfaced, Sonmez worked with the breaking news team to cover the story. Then, editors—defendants Marty Baron, Cameron Barr, Steven Ginsberg, Tracy Grant, Lori Montgomery, and Peter Wallsten—banned her from covering the allegations, explaining her experience was "too similar" to that of Kavanaugh's accuser. Sonmez protested the ban, and defendants expanded it to include stories with any remote connection to #MeToo and manufactured a purportedly reasonable justification—protecting the newspaper's objectivity.

After briefly lifting the ban, defendants reinstated it. They later denied her security protection when her home address was leaked amid rape and death threats, and they issued her an unjustified poor performance review, which negatively affected her pay. When Sonmez tweeted a reputable news outlet's summary of the sexual-misconduct allegations against Kobe Bryant, she faced an acute barrage of sexist online abuse. Instead of protecting Sonmez per the Post's security protocol, defendants suspended her. Their purported legitimate justification—a vague allegation that she violated the Post's social-media policy—quickly unraveled.

Sonmez's colleagues denounced the decision, with her union emphasizing the interconnectedness of the coverage ban, suspension, and other discrimination. The ban nonetheless persisted. Sonmez went to work every day unsure if she would have to remove herself from a story and remind colleagues of her own assault but certain that she would suffer the humiliation of unequal treatment.

Shortly after the Post lifted the second ban, Sonmez sued defendants for violating the D.C. Human Rights Act (DCHRA), alleging that they discriminated and retaliated against her on the basis of her sex and her status as a victim of sexual assault. In their motion to dismiss, defendants gave different purported justifications than those they had given Sonmez when they first banned her from doing her job. They argued that their decisions responded to Sonmez's public statements about her sexual assault. But even this justification was discriminatory. Sonmez's public statements about having been sexually assaulted are inextricably linked with her victim-status, sex, and opposition to workplace discrimination. In any case, it is not clear what defendants' real reason for punishing Sonmez ever was. Not once—neither during the first ban nor over the ensuing years of discrimination and retaliation—did defendants point to a single piece of Sonmez's journalism as evidence of a lack of objectivity.

Every time defendants leaned on their (contrived) journalistic objectivity justification, they admitted to unlawfully relying on Sonmez's protected characteristics to make employment decisions. The Superior Court's contrary reasoning should be rejected and its judgment reversed.

Issues Presented

I. Whether the Superior Court properly held that its orders responding to the COVID-19 health emergency tolled Sonmez's DCHRA claims or, alternatively, whether Sonmez's claims are equitably tolled, or, in any case, whether Sonmez states a timely hostile-work-environment claim under the continuing-violation doctrine.

II. Whether the complaint alleges that defendants discriminated against Sonmez in the terms, conditions, or privileges of her employment because of her sex or status as a victim of sexual assault, thus stating a DCHRA discrimination claim.

III. Whether the complaint alleges that Sonmez experienced unwelcome, severe or pervasive, sex-based harassment that created an unlawful hostile work environment imputable to defendants in violation of the DCHRA.

IV. Whether the complaint alleges that defendants responded to DCHRA-protected activities by taking actions that might well dissuade a reasonable employee from engaging in those protected activities, thus stating a DCHRA retaliation claim.

Statement of the Case

On March 24, 2022, the Superior Court granted defendants' motion to dismiss Sonmez's complaint for failure to state a claim and denied defendants' special motion to dismiss under D.C.'s Anti-SLAPP Act.

Statement of the Facts

I. Factual background

Because this appeal arises from a grant of a motion to dismiss, the facts described below are taken from the complaint, accepted as true, and construed in Sonmez's favor. *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011). Defendants are the Post and Sonmez's editors and supervisors: Marty Baron (executive editor of the Post until February 28, 2021), Cameron Barr (managing editor), Steven Ginsberg (national editor), Tracy Grant (managing editor), Lori Montgomery (deputy national editor), and Peter Wallsten (senior politics editor). JA13-14.

The discrimination and harassment faced by Sonmez occurred amid a pattern of gender inequality at the Post. Few women have ascended to department-head positions, JA27, and Grant was only the second woman in the newspaper's history to serve as a managing editor, JA14. The lack of women leaders and editors is particularly harmful to the paper's coverage of sexual harassment and sex discrimination. *See* JA27. As one former Post reporter recounted, when Baron, the Post's top editor, was pushed to add women to an all-male editorial team covering a high-profile story on sexual harassment, he suggested that the women on the team could not be trusted to make "decisions about the story … strictly on the basis of journalism." JA27 (citing Irin Carmon, *What Was the Washington Post Afraid Of?*, N.Y. Mag. (Apr. 1, 2019)).[1]

[1] https://tinyurl.com/bdd9rkw8.

A. Defendants initially assign Sonmez to stories involving sexual assault, knowing that she publicly identified as a sexual-assault survivor

When defendants hired Sonmez in June 2018, they were aware that she publicly identified as a sexual-assault survivor. JA17. During her job interview, Wallsten asked Sonmez why she had spoken publicly about the 2017 assault she had experienced at the hands of the then-L.A. Times Beijing Bureau Chief after they met through a foreign journalist organization. *Id.* Sonmez explained that she wanted to counter her assailant's misrepresentations and to prevent other women from suffering similar harm. *Id*. After Sonmez was hired, Wallsten pressed her about why she didn't report the assault to Beijing police. *Id*. This insensitive inquiry concerned Sonmez, but Wallsten did not indicate that Sonmez's public comments about her sexual assault would have any impact on her job responsibilities. JA17, 19.

When the Post hired Sonmez, she was participating in an L.A. Times investigation into her assailant's conduct, about which she kept her supervisors apprised. JA17-18. Sonmez's participation in the investigation did not compromise her work. During her first thirteen weeks at the Post she published over a dozen front-page stories, forty-one total print stories, and more than a hundred digital pieces, including seven that involved details about sexual misconduct. JA21-22. Not a single complaint was lodged—internally or otherwise—about her reporting. JA21.

When Sonmez informed Grant that the L.A. Times investigation would soon conclude, Grant told Sonmez to expect online attacks and suggested that she speak with the Post's communications team should she wish to prepare a public statement. JA17.

So, in the days after Sonmez learned on August 30, 2018 that the L.A. Times investigation had concluded and that her assailant had resigned as a result, JA18, she began to prepare a statement, checking in with Wallsten, Grant, and the Post's communication team throughout the process. JA18, 20. Wallsten was "hesitant" about Sonmez's statement informing news outlets of her assailant's resignation, so Sonmez agreed to wait as he thought it over. JA18-20. Otherwise, he suggested deleting a line about the role of news organizations in combatting sexual misconduct, which Sonmez did. JA19. Neither Wallsten nor Grant ever indicated that Sonmez could face any job-related repercussions for releasing the statement. JA18, 19.

B. Initial coverage ban

1. A few weeks later, before Sonmez's statement was released, Post reporters broke the news of Christine Blasey Ford's accusations against Brett Kavanaugh on September 16, 2018. JA18. Editors assigned Sonmez to cover the Kavanaugh story, and she received positive feedback for her work. JA19.

Two days after the Kavanaugh story broke, during a meeting about the upcoming release of Sonmez's L.A. Times-investigation statement, Wallsten asked her how she was doing in light of the Kavanaugh story. JA19. Sonmez shared that reading the accusations had at first been difficult, but that after taking a walk around the block to clear her head, she was able to work on the story without issue. JA19-20.

Just after Sonmez alerted her editors that she had sent out the approved statement, on September 18, 2018, Wallsten emailed her to schedule a meeting about the Post's "coverage moving forward." JA20. He instructed Sonmez to cancel a scheduled

MSNBC appearance about her front-page Kavanaugh story. JA20. At the meeting, Wallsten, Ginsberg, and Montgomery told Sonmez that she was barred from writing about the Kavanaugh story until further notice. JA21. They provided two reasons: First, they stated that they believed the details of Blasey Ford's allegations were "too similar" to those of Sonmez's assault; second, they imposed the ban because Sonmez had taken a walk around the block after first being assigned the Kavanaugh story. JA21. Although the editors expressed their dissatisfaction with Sonmez's L.A. Times-investigation statement—which Grant and the Post's lawyers had approved—they did not say that the statement led to the ban. JA21. The sudden switch in defendants' interactions with Sonmez suggested that the ban was a directive from above them. Later, Ginsberg would claim that the decision to impose the coverage ban came from Baron, who never interacted with Sonmez. JA35.

Soon after the ban was imposed, Montgomery, like Wallsten before her, asked Sonmez why she had not contacted Beijing police. JA22. Montgomery took the victim-blaming a step further, telling Sonmez that she was always taught that a woman should "just say no" if a man tries to assault her. JA22.

2. Sonmez protested the ban's imposition immediately. JA21-22. In an email to Ginsberg, Montgomery, Wallsten, and Grant, she emphasized that she was not struggling to be fair in her Kavanaugh reporting and prioritized her responsibility as an impartial journalist. JA21-23. She wrote that she felt "frustrated and uncomfortable being in the newsroom but unable to report on this story … sidelined from this story based on what happened to me in Beijing … I strongly disagree with this decision." JA23.

On September 19, 2018, one day after the initial ban took effect, Sonmez received an email from a South China Morning Post reporter writing a story about her assailant and outlining misrepresentations he had made about Sonmez and the assault. JA24-25. After Sonmez forwarded the email to her editors, Grant and Ginsberg instructed Sonmez to take a few days off. JA25. During those days, Sonmez communicated with Grant and Ginsberg about her plan to respond to the South China Morning Post reporter and asked whether the Post wanted to play a role in crafting her response. *Id*. Grant told Sonmez that the Post wanted to receive updates but that Sonmez could decide how to respond. *Id*. On September 21, 2018, Wallsten instructed Sonmez to extend her leave until September 26, which editors then extended to September 30. JA26. In an October 2, 2018 meeting about the reporter's inquiry, Grant told Sonmez she wanted their discussion to be the last on the issue of Sonmez's assault. *Id*. Grant reiterated the next day that "[i]f you feel the need to respond/discuss further publicly … doing so would potentially limit the stories you could handle." *Id*.

Despite Sonmez's protests, editors refused to lift the Kavanaugh-coverage ban and expanded their purported justifications for it to include Sonmez's public statement following the L.A. Times investigation. Barr, a managing editor, accused Sonmez of being an "activist" by speaking out about her assault, asserting that she had "taken a side on the issue" and was "trying to have it both ways": being open about her experience and continuing to report on the topic. JA23. "We don't have reporters who make statements on issues they are covering," he continued. JA24. "We don't want the external perception that we have an advocate covering

something she has experienced." *Id.* Grant told Sonmez that editors had to "protect the story," insinuating that Sonmez's participation would threaten their chances for winning prizes. *Id*. Ginsberg raised his voice as he told Sonmez that her continued reporting on the Kavanaugh story was a conflict of interest, and he yelled at Sonmez as he accused her of wanting news organizations to report on her assailant's resignation. JA23-24. On a September 21, 2018 call, Grant chastised Sonmez for not including her assailant's assertions in her initial public statements on the assault, telling her "I do think the only thing we have as journalists is our credibility and our willingness to be transparent." JA26. In an October 17, 2019 meeting, Grant belittled Sonmez's concerns about inaccurate news coverage of her assault as involving "errors real or imagined." JA33-34.

Editors sought to keep the Kavanaugh-coverage ban a secret from Sonmez's colleagues. *See* JA24, 26. But that was unrealistic because the ban affected Sonmez's day-to-day job duties, and she was repeatedly forced to disclose why she could not report on stories that otherwise would be assigned to her. JA29, 32.

3. Then, defendants expanded the ban. On October 10, 2018, Ginsberg and Wallsten met with Sonmez to tell her that she would be barred until the end of the midterm elections from covering anything related to #MeToo—a movement originated by women advocating against sexual harassment and misconduct perpetrated by men. JA28; *Global Opinions: #MeToo is at a Crossroads in America. Around the World, It's Just Beginning,* The Washington Post (May 8, 2020).[2] As a

[2] https://tinyurl.com/mwa9br4a.

result, Sonmez was barred from covering, for example, Senator Heidi Heitkamp's reelection campaign ad that identified, and misidentified, sexual-abuse survivors without their consent. JA28. Hours later, Sonmez had to stop writing a piece on the Alaska lieutenant governor's resignation after discovering that the story involved inappropriate comments he made to a woman. JA28-29. When Sonmez was assigned a story about a Trump rally in which he derided Blasey Ford, Wallsten told Sonmez to "write it straight." JA27.

The ban was lifted after the midterm elections, on November 7, 2018, without any discussion, opening the door for Sonmez to write approximately two-dozen stories related to misconduct or #MeToo. JA29.

C. Indefinite ban

On August 23, 2019, *Reason Magazine* published an article containing numerous inaccuracies about the "injustice" done to Sonmez's assailant by sexual-assault accusations. JA30. Afterward, Sonmez faced a wave of abusive messages online. *Id.* Additional articles and tweets, including by prominent individuals with large audiences, mischaracterized the assault and Sonmez's public statements. JA30-31. Some messages called Sonmez "evil" and "sociopathic" and encouraged her to kill herself; one, referring to Sonmez and another victim, said "[i]f any women deserved to be raped, these two do." JA30. Sonmez defended herself in various instances. JA31. She shared the article and negative attacks with her editors and requested a correction from *Reason Magazine*. *Id.* She pinned the correction request to her Twitter profile on August 25, 2019. *Id.*

Instead of supporting Sonmez's efforts to protect herself against misinformation and harassment, Ginsberg and Montgomery told Sonmez on September 4, 2018 that the Post was banning her indefinitely from all #MeToo-related coverage. JA31-32.

Again, Sonmez protested the ban. JA32. And again, defendants did not provide guidance to Sonmez's assignment editors and colleagues about the nature of the ban, leaving Sonmez to explain the ban internally on a near-weekly basis. *Id.*

The ban prevented Sonmez from working on breaking news stories to which she was assigned. These stories included sexual-assault allegations against Joe Biden, JA39, Trump's meeting with the family of slain Army soldier Vanessa Guillén who had been sexually harassed before her death, JA41, the COVID-19 death of Herman Cain who had previously been accused of sexual misconduct, *id.*, sexual-misconduct allegations against New York governor Andrew Cuomo, *id.*, and the senate campaign of Eric Greitens who had previously resigned as Missouri governor amid sexual-misconduct allegations, JA44. On the Cain and Guillén stories, editors reassigned coverage to a male colleague. JA41.

When the ban prevented Sonmez from covering Tara Reade's allegations against Joe Biden, she inquired about its status. JA39. Ginsberg responded that the Post was maintaining the "status quo." *Id.* Sonmez reiterated her strong disagreement, writing that the ban was "simply discriminatory" and emphasizing that it was "humiliating" to continuously tell colleagues about the ban and to know her editors did not see her as equal to her teammates. JA39-40. "Having to stand by helplessly and watch while my teammates write and I cannot," Sonmez wrote, "makes me feel terrible." JA40. No editor responded. *Id.* After a meeting, Wallsten emailed Sonmez acknowledging

that Sonmez told him the ban was causing her emotional distress but that he did not anticipate the Post lifting it any time soon. *Id.*

D. Written warning for personal social-media use

Soon after the second ban took effect, on October 2, 2019, Ginsberg instructed Sonmez to clear all future posts about her assault with her editors and to remove her pinned tweet correcting inaccuracies in the *Reason Magazine* article because it made him "uncomfortable." JA32. Sonmez explained that she pinned the tweet to protect against false statements and to prevent future attacks, but Ginsberg continued pressing her to remove it, even bartering to allow her to defend herself from future online attacks if she removed the tweet. *Id.* After Sonmez asked Ginsberg for his request in writing, she did not hear back until, on October 17, 2019, Grant and Barr warned Sonmez in writing that she had violated the Post's Social Media Policy with her pinned tweet. JA33. No mention of the policy had been made in any of Sonmez's previous conversations with editors. JA32-33. The warning stated that "reporters should make every effort to remain in the audience, to be the stagehand rather than the star" and that future infractions would lead to termination. JA33.

In a meeting that day about the warning, editors provided Sonmez with no guidance about how to respond to future attacks without violating the Social Media Policy and while remaining on Twitter, which was effectively a job requirement. JA33, 21. Indeed, as a breaking-news reporter Sonmez could not avoid being on Twitter; after all, she covered Donald Trump who regularly broke news on the platform. JA21. The silence on how Sonmez could address online misinformation

already made her feel isolated—and, then, editors piled on with outspoken animosity. When Sonmez reminded editors in the meeting of a recent interview she had done with the Columbia Journalism Review about #MeToo and journalism, Barr sarcastically replied, "We have high hopes for that." JA33. And Grant reprimanded Sonmez for taking notes during the meeting because "our words could be used against us." JA34.

The Washington Post Guild, the union representing Post employees, filed a grievance concerning Sonmez's supposed Social Media Policy violation. JA34. Guild members and Sonmez met with Grant and a Post attorney about the grievance on November 25, 2019. *Id*. During the meeting, Sonmez requested written guidance about how to comply with the Social Media Policy while defending herself against online attacks, to which Grant did not respond. *Id.*

E. Failure to take actions to stem online harassment

On January 26, 2020, shortly after news broke that Kobe Bryant had died, Sonmez tweeted a link to a 2016 *Daily Beast* article summarizing sexual-assault allegations made against him. JA34. Sonmez's Twitter account and work email were immediately flooded with thousands of messages, many containing rape and death threats. JA35-36. In an attempt to stem the abuse, Sonmez tweeted, "That folks are responding with rage & threats toward me (someone who didn't even write the piece but found it well reported) speaks volumes about the pressure people come under to stay silent in these cases." JA35. That evening, Baron emailed Sonmez: "A real lack of judgment to tweet this. Please stop. You're hurting this institution by doing this."

Id. Sonmez emailed Grant and Wallsten to inform them about the online threats she was receiving, linking tweets and describing messages. *Id.* Grant did not address Sonmez's reports of threatening messages but instructed Sonmez to delete the initial tweet and refrain from any further posts. JA35-36.

Sonmez responded that she would delete her tweets and asked what the Post suggest she do about the threats, including those that mentioned her home address (known as "doxxing"). JA36. Grant told her that the Post's Director of Social and Operations "should be able to" ask Twitter to take down the doxxing posts, but did not respond to Sonmez's concern about the abuse or threats. *Id.* Sonmez again asked about her security situation, and Grant responded that Sonmez still had not deleted the tweets, telling her, "You are not helping your security situation by keeping them up." *Id.* When Sonmez confirmed she had deleted the tweets, Grant thanked her and wrote, "You might want to consider a hotel or a friend's place for this evening." *Id.* Grant did not contact the Post's security team, even though it is protocol to do so when a reporter is threatened. *Id.* When Sonmez left the office that night, she checked into a hotel because she was afraid to go home. JA37.

F. Suspension

Grant called Sonmez at 8:15 p.m. that night to inform her that she had been placed on administrative leave, effective immediately, while the Post investigated whether her now-deleted tweet necessitated disciplinary action. JA37. The next day, media reports quoted Grant as saying that Sonmez had been suspended and that "[t]he tweets displayed poor judgment that undermined the work of her colleagues." *Id.*

People within and outside the Post doubted the Post's purported reason for the suspension. As one Twitter user wrote, "How could they suspend her for ONLY sharing a valid news report? Are they sure they're a publication?" *Id.* More than 300 Post employees signed the Washington Post Guild's open letter to Baron and Grant, which underscored that "[t]his is not the first time that The Post has sought to control how Felicia speaks on matters of sexual violence." JA38. A day later, Grant informed Sonmez that her suspension was lifted. *Id.* No editor ever explained why they thought Sonmez's tweet may have violated the Social Media Policy nor how they determined two days later that it did not.

The Washington Post Guild issued a statement outlining their concern that the Post did not take swift action to protect Sonmez from online abuse. JA38. Grant responded with a newsroom-wide memo signed by Baron and Barr stating: "We always endeavor to act quickly and thoroughly to protect and defend our colleagues from intimidation and threats." *Id.*

G. Performance evaluation

In early April 2020, Sonmez received a two out of five in the category of work ownership on her 2019 performance evaluation, which resulted in a lower raise. JA39, 40. Wallsten and Montgomery confirmed in a May 19, 2020 performance-evaluation meeting that the basis for this low score was Sonmez's tweets defending herself from inaccuracies and attacks about her assault. JA40. When Sonmez again asked for clarity on the ban during the meeting, Montgomery told her there remained a "concern about an appearance of conflict on these issues." *Id.*

H. Public scrutiny

In February 2021, Post editors publicly supported Sonmez's colleague, Seung Min Kim, after she was inundated with online abuse. JA42. Shortly thereafter, another Post colleague, Michelle Ye Hee Lee, was praised for her reporting and personal tweets about anti-Asian hate crimes, in which she called out news outlets for their shortcomings in their coverage of the issue. JA42-43. The Post allowed Lee to appear on CNN to talk about news organizations' shortcomings in covering anti-Asian violence. JA43. When Ginsberg was showered with praise at a March 16, 2021 Zoom Town Hall meeting for his public support of Kim, Sonmez wrote in the chat: "I wish editors had publicly supported me in the same way when I was being harassed rather than suspending me*." Id.*

Ginsberg publicly "took a side on the issue" of online harassment, the very thing editors had been warning Sonmez not to do. In a March 26, 2021 Vanity Fair article, Ginsberg was quoted as saying his role was "to defend and educate" and argued that the online abuse directed at Kim was "wildly misguided and a bad faith effort at intimidation." JA44-45. Sonmez tweeted in response, "Wish the same Post editor who is quoted in this piece supported me when I was doxxed and had to leave my home. Instead, they were silent, and I was suspended." JA45. She stressed that editors continued to prevent her from covering anything #MeToo related, "an action so harmful that I haven't been able to work for much of the past two weeks, am taking sick leave next week and have experienced a recurrence of the same debilitating symptoms that I had when I came forward about my assault 3 years ago." JA45.

On March 28, 2021, Politico reported on Sonmez's coverage ban. JA46. In response, Sonmez tweeted, "I've tried to keep my head down and just do my job the best I can, despite having to take myself off sexual-assault-related stories at least once every week or two, sometimes even more often." *Id.* The next day, editors lifted the ban. *Id.*

II. Procedural background

Sonmez sued defendants under the District of Columbia Human Rights Act, D.C. Code §§ 2-1402.11, 2-1402.61, on July 21, 2021. As relevant here, Sonmez alleged: that defendants discriminated against her because of her sex and her status as a victim of a sexual assault with respect to the terms, conditions, or privileges of her employment; defendants subjected her to a hostile work environment; and that defendants retaliated against her for engaging in DCHRA-protected activity.[3] Defendants moved to dismiss Sonmez's claims for failure to state a claim and under D.C.'s Anti-SLAPP Act, D.C. Code § 16-5502(b). The Superior Court granted defendants' motion to dismiss for failure to state a claim but denied defendants' special Anti-SLAPP Act motion.

Motion to dismiss for failure to state a claim. The court first rejected defendants' argument that Sonmez's claims are time-barred. Sonmez's claims were timely, the court held, because the Superior Court's orders tolling D.C. statutes of limitations during the COVID-19 public-health emergency stopped the clock on

[3] Sonmez also brought a negligent infliction of emotional distress claim but does not pursue it here.

limitation periods that were running between March 18, 2020 and March 30, 2021. JA153-54.

Turning to the merits of Sonmez's discrete discrimination claims, the court held that Sonmez did not demonstrate that defendants acted with the requisite discriminatory intent—that is, Sonmez had not sufficiently alleged that defendants' conduct was motivated by her sex or victim-status. JA159-60. The court accepted the Post's sweeping argument that because it knew of Sonmez's protected characteristics when it hired her, it could not have engaged in unlawful discrimination, JA161, even though in nearly every instance of employment discrimination the employer is aware of an employee's protected trait at the time of hiring.

Without fully considering the facts supporting Sonmez's hostile-work-environment claim, the court suggested that it dismissed this claim because the complaint included insufficient allegations that the harassment was related to Sonmez's protected characteristics. JA157.

In addressing Sonmez's retaliation claim, the court reasoned that Sonmez's objections to the Post's conduct did not relate to her membership in a protected class, emphasizing that victims of sexual assault were not a protected class under the DCHRA when she first objected to the ban. JA167. The court did not address the legal standard: whether Sonmez had a reasonable belief that she was opposing DCHRA protected activity. The court also reasoned that Sonmez failed to show temporal proximity between her complaints about the bans and the actions that defendants took against her. JA168.

Anti-SLAPP motion to dismiss. The court denied defendants' special motion to dismiss under the Anti-SLAPP law, JA170, holding that prohibiting Sonmez's coverage of #MeToo-related stories was not speech and thus did not trigger the law's protections, JA173-74. The court also reasoned that the Post had not made a prima facie showing that Sonmez's claims arose out of an "act in furtherance of the right of advocacy on issues of public interest" as required by the statute. JA174 (quoting D.C. Code § 16-5502(b)).[4]

Standard of Review

This Court reviews appeals arising from a grant of a motion to dismiss de novo. *See, e.g., Williams v. District of Columbia*, 9 A.3d 484, 488 (D.C. 2010).

Summary of the Argument

I. The Superior Court's COVID-19 emergency orders tolling statutory time limits paused the clock on Sonmez's claims from March 18, 2020 to March 31, 2021. Applying these orders, the lower court properly concluded that Sonmez's DCHRA claims were timely filed. Even if this Court were to disagree, equitable tolling would apply to Sonmez's claims in light of the court's affirmatively misleading orders. In any case, Sonmez's hostile-work-environment claim is timely under the continuing-violation doctrine.

II. The Superior Court failed to consider facts alleging direct and indirect evidence of discriminatory intent based on Sonmez's status as a sexual-assault

[4] Defendants cross-appealed the denial of their Anti-SLAPP motion to dismiss. Sonmez will address why the Superior Court's decision on that issue should be affirmed in her answering brief to defendants' cross-appeal.

victim. The complaint alleges that defendants repeatedly told Sonmez that they were relying on her victim-status to make employment decisions. Moreover, defendants did not treat other reporters the way they treated Sonmez even when those reporters covered stories related to their personal experiences and public statements. The complaint also alleges sex discrimination. First, inappropriate responses to sexual assault constitute sex discrimination as Supreme Court precedent demonstrates. Moreover, the complaint pleads that Sonmez was banned from covering a movement that involves gender power dynamics, not simply barred from writing stories related to sexual assault. Finally, Sonmez alleges that defendants relied on sexist stereotypes about how they expected Sonmez to behave as a *female* victim of sexual assault. In all events, defendants' sex- and victim-based discrimination related to "the terms, conditions, or privileges" of Sonmez's employment, thus violating the DCHRA.

III. In violation of the DCHRA, defendants contributed to a work environment already made hostile for Sonmez by waves of online harassment that were violent and sexist in nature. If not for Sonmez's sex and victim-status, defendants would not have subjected her to unwelcome coverage bans, control over her social-media posts, or accusations about not reporting her assault to police. Defendants exacerbated Sonmez's hostile work environment, affecting the conditions of her employment, by raising their voices and scolding her in meetings, making sarcastic comments, and failing to take her security concerns seriously.

IV. Defendants retaliated against Sonmez in violation of the DCHRA when they took numerous adverse actions against her—narrowing her job responsibilities, issuing her a written warning, refusing to protect her from threats, and giving her a

lower performance rating that negatively affected her compensation—in response to her opposition to their discrimination.

Argument

I. Sonmez's DCHRA claims are timely.

Although the Superior Court held that Sonmez's claims are timely, we discuss the issue here to explain why this threshold matter is not an alternative grounds for the court's judgment.

A. The Superior Court's COVID-19 orders tolled Sonmez's claims.

On March 18, 2020, the Superior Court ordered that "all statutory and rules-based time limits in the D.C. Code" be "tolled" in response to the COVID-19 pandemic until May 15, 2020.[1] In a series of subsequent orders, the court extended the tolling period from its original May 15, 2020 expiration date to March 30, 2021.[2]

Those orders extended Sonmez's time to sue. A toll "stop[s] the clock" on all running statutes of limitations. *See Artis v. District of Columbia*, 138 S. Ct. 594, 598 (2018). When tolling ends, the time resumes running. *Id.* at 601 (citing Black's Law Dictionary 1488 (6th ed. 1990)). Sonmez's DCHRA claims are subject to a one-year statute of limitations. D.C. Code § 2-1403.16(a). When tolling began on March 18, 2020, one-hundred-eighty-six days had passed since the second ban began on September 4, 2019. JA31. When tolling ended on March 30, 2021, Sonmez had one-

[1] *See Amended Order*, D.C. Super. Ct. (Mar. 18, 2020), https://tinyurl.com/26jdpzn6.

[2] *See Amended Order*, D.C. Super. Ct. (Jan. 13, 2021), https://tinyurl.com/yzcvj46h; *Amended Addendum to the General Order Concerning Civil Cases*, D.C. Super. Ct. (Jan. 21, 2021), https://tinyurl.com/bdhteamn.

hundred-seventy-nine days left to file claims related to the second ban. She filed her complaint one-hundred-twelve days later on July 21, 2021. JA148. Thus, she timely filed her claims arising out of the second ban and subsequent events.

The court below properly rejected defendants' two-pronged argument that Sonmez's claims were not tolled. First, relying on cherry-picked language from the Superior Court's August 13, 2020 order, defendants argued that the tolling period was not actually extended through March 30, 2021—when the pandemic emergency began to ease as vaccines became available—but instead lasted only from March 18, 2020 to June 19, 2020. Mem. in support of mot. to dismiss at 12 n.3. Admittedly, the June 19, 2020 order extending the tolling period could have been clearer.[3] That order reiterated the court's authority to extend "the period during which deadlines are suspended, tolled, and extended for all statutory and rules-based time limits in the D.C. Code … during the current judicial emergency and consistent with the best interest of the administration of justice."[4] This language indicates that the court viewed "the judicial emergency" caused by the pandemic as ongoing (that is, "current") and sought to exercise its authority to extend the period during which "all" time limits were tolled.[5] But unlike the August 13, 2020 order and subsequent

[3] *See Amended Order*, D.C. Super. Ct. (Jun. 19, 2020), https://tinyurl.com/3pkkfux3.

[4] *Id*.

[5] *Id*.

orders, the June 19, 2020 order does not include a specific pronouncement that "[s]uspension, tolling, and extension will continue."[6]

The orders issued after June 19, 2020, along with case law interpreting the tolling orders, clarify that the tolling period continued long after June 2020. The November 5, 2020 and January 13, 2021 orders mirrored the language of the August 13, 2020 order, extending the tolling period through January 15, 2021,[7] and, again, through March 30, 2021,[8] respectively. Despite the June order's lack of clarity, the Superior Court in *Berg v. Hickson* rejected the suggestion that the tolling period ended in June 2020, holding that the tolling period was extended from March 18, 2020 to March 30, 2021. Case No. 2021 CA 001977 V, at 2-4 (D.C. Super. Ct. 2021) (available at JA74-76); *accord Fragola v. Kenific Grp., Inc.*, 2022 WL 1908824, at *3 (D.D.C. Jun. 2022).

Second, defendants argued that the Superior Court's orders tolled only those deadlines originally set to expire during the tolling period, rather than tolling all running statutes of limitations. Because the statutes of limitations for Sonmez's claims would normally have expired after June 2020, defendants argued that the deadlines were never tolled and Sonmez's claims are untimely. They cited internally

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[6] *Compare Amended Order*, D.C. Super. Ct. (Jun. 19, 2020), https://tinyurl.com/3pkkfux3, *with Amended Order*, C. Super. Ct. (Aug. 13, 2020), https://tinyurl.com/ps62jpnp.

[7] *See Amended Order*, D.C. Super. Ct. (Nov. 5, 2020), https://tinyurl.com/5bu99xm2.

[8] *See Amended Order*, D.C. Super. Ct. (Jan. 13, 2021), https://tinyurl.com/yzcvj46h.

inconsistent language from the June 19, 2020 order stating that "all deadlines and time limits in statutes … that would otherwise expire before June 19, 2020 including statutes of limitations, are suspended, tolled, and extended during the period of the current emergency."[9] The use of the word "tolled," as explained above (at 21) would have been superfluous if the court had only intended to suspend or extend the deadlines set to end by June 19, 2020. This interpretation is consistent with the Superior Court's understanding of its own orders. In *Berg*, for example, the court concluded that the orders tolled all running statutes of limitations, finding that there was "no language in the Chief Judge's Order which indicates that the tolling period does not apply to deadlines that occurred after March 30, 2021" and that "[t]o find otherwise would result in a clear injustice." JA75-76. The court below properly endorsed *Berg*'s understanding of the Superior Court's orders. JA154 n.2.

B. Even if this Court finds that Sonmez's claims were filed beyond the limitations period, equitable tolling renders her claims timely.

Even if this Court were to determine that Sonmez's claims were not tolled by the Superior Court's COVID-19 tolling orders, the claims should be equitably tolled. A litigant is entitled to equitable tolling if she shows (1) that she has pursued her rights diligently, and (2) that some extraordinary circumstances stood in her way. *Holland v. Florida*, 560 U.S. 631, 649 (2010).

Equitable tolling is appropriate when a party misses a non-jurisdictional deadline because "a court's conduct lulled the movant into inaction through reliance on that

[9] *See Amended Order*, D.C. Super. Ct. (Jun. 19, 2020), https://tinyurl.com/3pkkfux3.

conduct" and the court's conduct was "affirmatively misleading." *Odie v. United States*, 42 F.4th 940, 946-47 (8th Cir. 2022); *see also Pliler v. Ford*, 542 U.S. 225, 235 (2004) (O'Connor, J., concurring) ("[I]f the petitioner is affirmatively misled, either by the court or by the State, equitable tolling might well be appropriate."); *Munchinski v. Wilson*, 694 F.3d 308, 329-30 (3d Cir. 2012); *Alexander v. Cockrell*, 294 F.3d 626, 629-30 (5th Cir. 2002). Here, if Sonmez misread the Superior Court's orders, her misunderstanding is attributable to the orders' inconsistent, muddled language, which affirmatively misled her. The Superior Court itself interpreted its orders as tolling Sonmez's claims, so even if this Court disagrees, the orders constitute an extraordinary circumstance that prevented Sonmez from timely filing.

Sonmez also exercised "reasonable diligence." *Holland*, 560 U.S. at 653. She filed her complaint eighty-seven days before she reasonably believed, in light of the COVID-19 tolling orders, that claims arising out of the second ban would expire.

C. Regardless, Sonmez's hostile-work-environment claim is timely under the continuing-violation doctrine.

Sonmez's hostile-work-environment claim is not time-barred for another reason: the continuing-violation doctrine. Hostile-work-environment claims by "[t]heir very nature involve[] repeated conduct." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 115 (2002). Thus, if "an act contributing to the claim occurs within the filing period," a court reviews "the entire time period of the hostile environment … for the purposes of determining liability." *Id.* at 117. The acts that fall within the time limit need not be actionable themselves, *see Vickers v. Powell*, 493 F.3d 186, 200 (D.C. Cir. 2007), but must only contribute to an overall hostile-work-environment claim

that, understood as a whole, is actionable*, see Morgan*, 536 U.S. at 117. Courts use "common sense" when assessing whether acts within the statute of limitations are part of the same hostile environment as those outside it. *Vickers*, 493 F.3d at 200.

Taking the allegations in the complaint as true and drawing reasonable inferences in Sonmez's favor, several acts that contributed to the hostile work environment occurred within the year before Sonmez filed suit. This conduct included, but was not limited to:

- Defendants barred Sonmez from covering stories involving allegations of sexual misconduct, including stories about Herman Cain's death (July 30, 2020), sexual harassment allegations against Andrew Cuomo (February 2021), Eric Greitens's senate campaign (March 2021), and others. JA41, 44.
- On March 16, 2021, during a Zoom meeting attended by hundreds of Post employees in which Ginsberg was celebrated for supporting Kim, Sonmez sent a message to the Zoom chat that she wished editors had supported her when she received death threats online. JA43. Barr refused to address questions about the difference between Kim's and Sonmez's situations. JA43-44. Sonmez had to miss a few days from work due to post-traumatic-stress symptoms caused by the meeting. JA44.
- After the town hall, Ginsberg spoke with Vanity Fair about the Post's support for Kim, hypocritically saying his role was to "defend and educate." JA44-45. Sonmez was stunned to see Ginsberg and other editors, who were aware of Sonmez's emotional distress after the Zoom call, continue to enjoy public praise while maintaining the discriminatory ban against Sonmez. JA45.

Because the continuing-violation doctrine allows a court to look at all related instances of harassment contributing to a hostile work environment if some instances occurred within the statute of limitations, these acts of abuse render Sonmez's hostile-work-environment claim timely even without judicial or equitable tolling. Under a "common sense" analysis, *Vickers*, 493 F.3d at 200, the conduct here is part of a pattern of ongoing harassment that preceded the statute of limitations cut-off. And discovery may reveal that other harassment—including online harassment (*see infra* at 44)—occurred in the year before Sonmez sued. After all, the complaint indicates that Sonmez was regularly inundated with sexist online abuse that defendants knew about and to which they negligently failed to respond.

II. Defendants discriminated against Sonmez with respect to the "terms, conditions, or privileges" of her employment because of her sex and her status as a survivor of sexual assault.

The DCHRA prohibits an employer from "discriminat[ing] against any individual, with respect to [her] compensation, terms, conditions, or privileges of employment" because of her "sex" or status as a "victim" of a "sexual offense." D.C. Code §§ 2-1402.11(a)(1)(A), 2-1402.11(a).[10] As we now show, the complaint sufficiently alleges that defendants discriminated against Sonmez because of her

[10] Because Title VII and the DCHRA use identical language to prohibit employment discrimination (except when the DCHRA is broader), this Court relies on Title VII case law in interpreting and applying the DCHRA. *See, e.g.*, *RAP, Inc. v. D.C. Comm'n on Hum. Rts.*, 485 A.2d 173, 176 (D.C. 1984) (discrete discrimination claims); *Lively v. Flexible Packaging Ass'n*, 830 A.2d 874, 887-88 (D.C. 2003) (hostile-work-environment claims); *Vogel v. D.C. Off. of Planning*, 944 A.2d 456, 463 n.12 (D.C. 2008) (retaliation claims).

victim-status and her sex when they narrowed her job duties, suspended her, failed to provide her with security, and lowered her compensation by downgrading her performance review. Accordingly, the Superior Court's judgment on Sonmez's discrimination claims should be reversed and the case remanded for discovery.

A. The Post discriminated against Sonmez based on her protected status as a victim of sexual assault.

In 2019, the D.C. Council amended the DCHRA to prohibit discrimination with respect to the "terms, conditions, or privileges" of an employee's job because of an employee's status as a "victim" of a "sexual offense," because an employee "sought physical or mental health treatment" related to "a sexual offense," or because "[a]n individual caused a disruption at the employee's workplace or made a threat to an employee's employment." D.C. Code §§ 2-1402.11(a), 2-1402.11(c-1)(1)(B)-(C). The amendment protects victims who are punished because their employer wants to avoid "drama" at the workplace and ensures that victims can seek support from their employer without fear of retaliation or judgment. *Report on Bill 22-0014, the "Employment Protections for Victims of Domestic Violence, Sexual Offenses, and Stalking Amendment Act of 2018,"* 22nd Council Session (2017-2018), at 2-3, 5.[11]

To plead discriminatory intent under the DCHRA, a plaintiff may allege direct or indirect evidence. *See Ladson v. George Washington Univ.*, 204 F. Supp. 3d 56, 62-63 (D.D.C. 2016). Sonmez has alleged direct evidence that the second ban and negative performance review were motivated by discriminatory intent. To the extent that indirect evidence is relevant, Sonmez also pleads facts from which the same

[11] https://tinyurl.com/3zhd9esw.

discriminatory animus may be inferred for all the harmful employment decisions that defendants took against her.

1. Defendants' statements are direct evidence of status-based discriminatory intent.

"An employee has direct evidence of unlawful discrimination in circumstances where, for example, 'the employer overtly refer[s] to the employee's protected trait when making an unfavorable employment decision.'" *Mosleh v. Howard Univ.*, 2022 WL 898860, at *5 (D.D.C. 2022). When a plaintiff alleges direct evidence of discrimination, the defendant will not be entitled to judgment on a motion to dismiss even if it maintains that its conduct was motivated by a legitimate, non-discriminatory reason. *See Munro v. LaHood*, 839 F. Supp. 2d 354, 363 (D.D.C. 2012); *Mosleh*, 2022 WL 898860, at *5.

Defendants told Sonmez she was banned from covering #MeToo and given a poor performance review because she had been sexually assaulted. Defendants told Sonmez that they instituted the first ban because "[t]he work you do intersects with what you experienced in your life" and because the circumstances of her sexual assault were "too similar" to the accusation levied against Kavanaugh. JA24, 21. In other words, they expressly told Sonmez that the ban was based on her status as a sexual-assault victim, in violation of the DCHRA. Though Sonmez does not seek to recover for the injuries caused by the first ban (she acknowledges that this claim is untimely, *see* mem. in opp'n to defs.' mot. to dismiss, at 6-7), direct evidence of discrimination "outside [the statute of limitations] period may nonetheless be

relevant to elucidate issues of intent, past practice, and discriminatory impact." *Daniels v. Potomac Elec. Power Co.*, 100 A.3d 139, 146 n.9 (D.C. 2014).

Sonmez's allegations support the conclusion that the first ban is interrelated with subsequent actions defendants took against her. So, the reasons defendants gave for imposing the first ban elucidate what motivated defendants' later decisions. Indeed, shortly after defendants reinstated the ban, Ginsberg told Sonmez to take down her pinned tweet addressing false accusations about her sexual assault because he was "uncomfortable" with it, indicating that Ginsburg simply did not like being reminded of Sonmez's status as a sexual-assault survivor and that defendants continued to discriminate against Sonmez because of her status. JA32. Two weeks later, defendants accused Sonmez of trying to be the "star" of her sexual assault for continuing to defend herself from false accusations. JA33. And "[t]he basis for the low score" on Sonmez's 2019 performance evaluation was her "tweets defending herself from false claims related to her sexual assault." JA40. Defendants are free to try to convince a jury that their reasons for reinstating the ban and for giving Sonmez a poor performance review were, in fact, entirely distinct from the reasons the complaint alleges that they themselves provided. But, at this stage, when the Court accepts the complaint's allegations as true and construes the facts in Sonmez's favor, it must accept that defendants imposed the second #MeToo ban and gave Sonmez a poor performance review for the very same reasons they imposed the first ban: because Sonmez is a victim of sexual assault.

Defendants' appearance-of-conflict motive is discriminatory. Defendants told Sonmez that they imposed the coverage ban to prevent "the appearance of a

conflict of interest" and to "protect the story"—that is, to protect the Post's chances of winning prizes for its coverage of the Kavanaugh allegations. JA23-24. Discriminating against an employee on the basis of a protected characteristic because of third-party preferences is still discrimination. *Diaz v. Pan Am. World Airways, Inc.*, 442 F.2d 385, 389 (5th Cir. 1971). The Post is free to cater to its readers' preferences, including to avoid "the appearance of a conflict of interest," but the Post may not do so based on an employee's protected characteristics. *Id.* And just as a research institution may not discriminate against employees on the basis of their age because "it [i]s difficult for older people to get funding," *see Silver v. North Shore Univ. Hosp.*, 490 F. Supp. 2d 354, 360, 365 (S.D.N.Y. 2007), the Post cannot, consistent with the DCHRA, discriminate against Sonmez on the basis of her victim-status because doing so might help improve the Post's chances of winning prizes for its reporting. So, when Barr told Sonmez that the basis for the ban was a concern about "the external perception that we have an advocate covering something she has experienced," JA24, he admitted to the Post's discriminatory motive.

Defendants admitted that they instituted the ban to avoid a workplace "disruption." As a breaking news reporter, Twitter was a part of Sonmez's workplace. JA21, 32-33. Every day, she was required to use Twitter to track stories, cultivate sources, and promote her work. Therefore, when the *Reason Magazine* article—sympathetic to Sonmez's abuser with his inaccurate version of the assault—was promoted on Twitter, the effect was the equivalent of an abuser walking through the newsroom to denigrate Sonmez in front of her colleagues. JA30-31. This false account and the online attacks that followed, calling Sonmez "evil" and

"sociopathic," and telling her that she "deserve[d] to be raped," threatened Sonmez's reputation, livelihood, and mental health. JA30. Given the DCHRA's specific protections for victims of sexual offenses, even defendants' pretextual reason for imposing the second ban—avoiding external perceptions about the misinformation targeting Sonmez and the challenges posed by her efforts to defend herself against online abuse—constitutes direct evidence of discrimination. By banning Sonmez from doing her job because she was attacked online and then defended herself, the Post punished Sonmez for "a disruption at [her] workplace" and "threat[s] to [her] employment," in violation of the DCHRA. D.C. Code § 2-1402.11(c-1)(1)(C).

Defendants also told Sonmez that she was barred from covering #MeToo for attending to her mental health. As noted, employers may not rely on an employee's efforts to seek "mental health treatment" "relating to … a sexual offense" in making employment decisions. D.C. Code § 2-1402.11(c-1)(1)(B). When defendants acknowledged that they were punishing Sonmez for taking care of her mental health, explaining that the ban was imposed, at least in part, because she went for a walk around the block after first learning of the accusations against Kavanaugh, they admitted to acting on an unlawful motive. JA21. Admitting to acting on the basis of the employee's victim-status, as defendants did here, is direct evidence of discriminatory intent. D.C. Code §§ 2-1402.11(a)(1)(A), 2-1402.11(c-1)(1)(B).

The coverage bans and the negative performance review bookend the Post's campaign of discrimination. Therefore, the complaint sufficiently alleges that the

same discriminatory intent that motivated these decisions also animated the intervening adverse actions against Sonmez.

2. Sonmez sufficiently pleaded indirect evidence that defendants acted with discriminatory intent.

As explained, defendants told Sonmez why they acted against her. Even the reasons that they view as legitimate, non-discriminatory justifications for their actions—whether framed as an objectivity defense or an interest in avoiding workplace disruption—make Sonmez's point at this stage: Defendants relied on her protected status as a victim of sexual assault to take action against her, which is unlawful under the DCHRA. But even if (counterfactually) this case depends on allegations of circumstantial evidence, Sonmez has established that defendants relied on her victim-status to alter the terms, conditions, or privileges of her employment.

First, an allegation that shows that a defendant's explanation "is unworthy of credence is" a "form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000). That the Post lifted the second ban only after Politico published a story recounting defendants' mistreatment of Sonmez is perhaps the best evidence that defendants were never really concerned with an appearance of bias. JA46. Likewise, the Post admitted that its proffered reason for suspending Sonmez was not the real reason for the suspension: Facing internal and public backlash to the suspension, defendants conceded that Sonmez had not violated the Post's Social Media Policy and never explained why they thought she might have or how they determined (once under public scrutiny) that she had not. JA37-38. The

complaint is replete with similar allegations that demonstrate that defendants did not provide Sonmez with the real reasons why they acted against her. *See e.g.*, JA31-32, 42-43.

Second, "[a] plaintiff can [also] raise an inference of discrimination by showing 'that she was treated differently from similarly situated employees who are not part of the protected class.'" *Brown v. Sessoms*, 774 F.3d 1016, 1022 (D.C. Cir. 2014). When other reporters spoke out about sensitive issues, the Post not only let them continue to cover that subject, but held them up as models of responsible journalism. One reporter frequently spoke out about anti-Asian hate crimes and publicly objected to the media's coverage of such crimes. JA42-43. Defendants not only allowed her to continue to write stories on anti-Asian violence but publicly defended her from online harassment and let her appear on CNN to discuss the issue. *Id*.

Similarly, in March 2021, Ginsberg praised the Post's response to abuse directed against Asian reporters in a Vanity Fair article. JA44-45. Despite his public stance, the Post did not prohibit Ginsberg from making media appearances, put guardrails around the stories he could edit, or tell him that "[w]e don't have reporters who make statements on issues they are covering." JA20-21, 24, 31-32. In contrast, when Sonmez spoke out against media organizations' handling of sexual misconduct and defended herself from false accusations about her sexual assault, the Post banned her from covering anything remotely related to sexual misconduct and negatively reviewed her job performance. JA43, 31-32, 40.

When other Post reporters faced online harassment that disrupted their day-to-day work, the Post actively defended those employees. For example, after another

reporter received a barrage of online harassment, defendants followed the Post's security protocol. JA42. They also expressed public support for her. *Id*. But when Sonmez received death and rape threats and had her home address revealed by online abusers, defendants suspended her and told her, contrary to Post policy, to find her own security solutions. JA36-37, 43-44.

Taken together, and in light of defendants' explicitly discriminatory statements described above, *supra* 27-32, the complaint plausibly alleges that discriminatory intent based on victim-status animated defendants' decisions.

B. The Post also discriminated against Sonmez based on sex.

The Post's discrimination was also based on sex. First, punishing an individual because she has been sexually assaulted is sex discrimination, and for the reasons just described, the Post discriminated against Sonmez in response to her sexual assault. Second, the allegations support an inference that the Post treated Sonmez differently based on her sex, not just her victim status. Finally, the Post engaged in sex stereotyping.

1. Discrimination in response to sexual assault is discrimination on the basis of sex.

An employer's *response* (or lack of response) to sexual harassment may constitute discrimination because of sex. *See, e.g., Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 757 (1998). "[A]n employer's actions undertaken '*because of* a rape (whether in or outside of the workplace) might give rise to a reasonable inference of discrimination because of sex.'" *Fuller v. Idaho Dep't of Corr.*, 865 F.3d 1154, 1167 n.13 (9th Cir. 2017). Applying this rule, the same facts that show defendants relied

on Sonmez's status as a victim of sexual assault to narrow her job responsibilities, deny her security, suspend her, and review her performance negatively, *supra* at 27-35, also plausibly allege that defendants discriminated against her based on her sex.

2. The Post discriminated on the basis of sex when it banned Sonmez from covering stories relating to sexism generally, not just to sexual assault.

The complaint alleges facts from which an inference of sex-based discrimination can be drawn for another reason: Sonmez was banned not just from covering sexual assault—a harm that people, regardless of their gender, may experience—but from covering stories related to discrimination against women. An analogy helps illustrate why these allegations are sufficient to demonstrate discriminatory intent. In *Johnson v. PG Publ'g Co.*, a court denied a newspaper's motion to dismiss when a Black plaintiff alleged that her employer took her off stories that concerned police brutality, protests, and other issues that implicated race "because she had opposed and spoke[n] out about racism and the murder of black people at the hands of police." 2021 WL 4171420, at *2 (W.D. Pa. 2021) (denying motion to certify interlocutory appeal). The court concluded that this allegation was sufficient to plead causation for the plaintiff's Section 1981 discrimination and retaliation claims. *Id.* at *1.

Similarly, Sonmez alleges gender discrimination because the Post removed her from covering anything related to #MeToo—a movement "focused on how power dynamics and outdated expectations of gender roles in the workplace have worked to silence *women*." *Elliott v. Donegan,* 469 F. Supp. 3d 40, 52 (E.D.N.Y. 2020) (emphasis added). Sonmez's allegations also indicate that defendants believe

women, but not men, are incapable of writing objectively about sexual misconduct. JA27-28. At least twice, Sonmez was removed from a #MeToo story and replaced by a male colleague. JA41. And editors indicated that women could not be trusted to make decisions about stories regarding sexism strictly on the basis of good journalism. JA27.

The Post viewed female reporters' perceived or actual experience with sexism and sexual violence as detrimental to their credibility because it holds negative perceptions about women. Even though Sonmez had no experience with (and had made no public statements about), for example, being misidentified as a sexual-abuse survivor, she was barred from writing about developments in Senator Heidi Heitkamp's reelection campaign. JA28. This example of how the coverage ban was applied to change Sonmez's job demonstrates that the Post ascribed to female reporters traits of untrustworthiness and bias that they "automatically assumed to be a necessary attribute" of their sex. *Gay Rts. Coal. v. Georgetown Univ.*, 536 A.2d 1, 28 (D.C. 1987). It is irrelevant, at this stage, that defendants sometimes allowed women to cover #MeToo because the "employer is liable for treating *this* woman [Sonmez] worse in part because of her sex." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1741 (2020). Any contention otherwise does no more than create a factual dispute that, on review from a motion to dismiss, means the motion must be resolved in Sonmez's favor.

3. The Post engaged in sex stereotyping of Sonmez as a female victim of sexual assault.

Employer conduct that discriminates against an employee based on membership in a subgroup of their gender identity—a gender identity "plus" another identity—violates Title VII. *See, e.g., Phillips v. Martin Marietta Corp.,* 400 U.S. 542, 544 (1971). It is well settled that gender stereotyping is discrimination because of sex. *See, e.g.*, *Bostock v. Clayton County*, 140 S. Ct. 1731, 1742 (2020). For example, an employer may not, consistent with a prohibition on sex discrimination, penalize an employee for failing to dress and act according to sexist stereotypes. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250-51 (1989).

Here, the complaint plausibly alleges that defendants penalized Sonmez for failing to conform to the stereotypical behavior defendants expected of female victims of assault. Two editors inquired as to why Sonmez did not go to the Beijing police to report her assault, demonstrating that they were relying on the stereotype that women who are sexually assaulted report immediately and any delay is proof that the assault did not occur. JA17, 22; *State v. Hill*, 578 A.2d 370, 374-75 (N.J. 1990). This archaic "hue and cry" rule supposedly dispelled "suspicion that the victim had somehow been involved or complicit in the crime." *Hill*, 578 A.2d at 375. In truth, most victims take time to report assaults. Konstantin Klemmer, Daniel B. Neill, & Stephen A. Jarvis, *Understanding Spatial Patterns in Rape Reporting Delays*, Royal Soc'y Open Sci., Jan. 7, 2021, at 8-9.[12]

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[12]https://tinyurl.com/22588uyw.

Relying on another sexist stereotype, Montgomery told Sonmez "she was always taught that *a woman* should 'just say no' if *a man* tries to assault her." JA22 (emphasis added). This statement reflects the outdated stereotype that women always resist sexual assault by men to the utmost to defend their honor. *People v. Dohring*, 59 N.Y. 374, 384 (1874) (noting court could not "conceive of a woman" who would not "resist [unwanted sex] so hard and so long as she was able"); Michelle J. Anderson, *Reviving Resistance in Rape Law*, 1998 U. Ill. L. Rev. 953, 962-68 (1998); *see also State v. Rusk*, 424 A.2d 720, 733 (Md. 1981) (Cole, J., dissenting) (explaining view that it is "the natural instinct of every proud female to resist"). In fact, only a small fraction of victims physically resist their attacker, and American rape law abolished the utmost resistance requirement decades ago. Anderson, *Reviving*, *supra*, at 958, 964-68.

The Post similarly engaged in "tightrope bias." *See* Joan C. Williams et. al., *Beyond Implicit Bias: Litigating Race and Gender Employment Discrimination Using Data from the Workplace Experiences Survey*, 72 Hastings L.J. 337, 341 (2020). This phenomenon explains the bind women find themselves in, including when responding to sexual assault, because it's impossible to conform to the various "prescriptive stereotypes about how" women "*should* behave." *See id*. Whichever way a woman behaves—if she stays silent (which conforms to the stereotype that "the good woman" must be "nice … helpful, modest, interpersonally sensitive," *id.* at 366), her credibility is questioned; but if she speaks out, she's seen as aggressive and is also penalized. *See id*. The Post expected Sonmez to stay silent when her credibility was being questioned online, JA19, 32-33, and admonished her for

defending herself against misinformation spread by her assailant and his supporters because that approach made male editors "uncomfortable," JA32. Defendants left Sonmez powerless to publicly defend her credibility, while at the same time altering her work assignments because they worried the public would not find her credible. In doing so, the Post imposed the type of "intolerable and impermissible catch 22" that anti-discrimination laws "lift[] women out of." *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989).

The Post also subjected Sonmez to "Prove-It-Again bias"—the stereotype that women "need to provide more evidence of competence in order to be seen as equally competent." Williams et al., *Beyond Implicit Bias*, *supra*, at 354. Sonmez supposedly couldn't be trusted to make decisions strictly on the basis of journalism, *see* JA27, even though, again, "[n]ot a single complaint was lodged, inside or outside of the Post, regarding her reporting," JA21. In contrast, male reporters' competence as impartial journalists went unquestioned. For example, the Post advertised one reporter as qualified to report on military-related stories *because* he was an Iraq War veteran. JA41.

The complaint alleges that defendants' steady discrimination against Sonmez formed an interrelated campaign. Sonmez's colleagues recognized the connections between the actions taken against Sonmez when they signed a statement protesting Sonmez's suspension and associating that action with the coverage ban and security denial. *See* JA37-38. Therefore, the complaint sufficiently alleges that a causal connection exists between the sexist stereotypes defendants consistently relied on and the employment decisions they took against Sonmez.

C. Defendants' discrimination affected "the terms, conditions, or privileges" of Sonmez's employment.

Relying on since-overruled precedent, defendants argued below that the DCHRA requires a plaintiff alleging employment discrimination to plead a narrowly defined "adverse employment action"—a change in employment status that involves "objectively tangible harm," "such as a refusal to hire, denial of transfer, demotion, or termination." Mem. in supp. of mot. to dismiss, at 16-17. This argument fails.

The DCHRA does not use the phrase "adverse employment action," and recent precedent forecloses defendants' atextual interpretation of what constitutes actionable discrimination under the statute. The DCHRA prohibits discrimination based on any protected class "with respect to compensation, terms, conditions, or privileges of employment." D.C. Code § 2-1402.11(a)(1)(A). As the en banc D.C. Circuit recently made clear, "[o]nce it has been established that an employer has discriminated against an employee with respect to that employee's 'terms, conditions, or privileges of employment' because of a protected characteristic, the analysis is complete…[and] [a]ny additional requirement, such as a demand for 'objectively tangible harm,' is a judicial gloss that lacks any textual support." *Chambers v. District of Columbia*, 35 F.4th 870, 874-75 (D.C. Cir. 2022) (en banc).

Applying this straightforward interpretation of the DCHRA's text, defendants' conduct discriminated against Sonmez with respect to the terms, conditions, and privileges of her employment when they imposed the coverage ban, denied her security protection, suspended her, and gave her an unjustified low performance rating, which negatively impacted her compensation. The September 2019-March

2021 ban barred her from covering #MeToo stories, JA21, 29, 31, 46, and thus altered her job assignment, which qualifies as a workplace term, condition, or privilege. EEOC Compl. Man., § 613.1(a), 2006 WL 4672701 (2006); *Chambers*, 35 F.4th at 874. As per protocol, when a reporter is threatened, security protection is a privilege of Sonmez's employment that defendants denied her. *See Hishon v. King & Spalding*, 467 U.S. 69, 75 (1984). When defendants suspended Sonmez, they dictated *when* she could work and thus affected terms and conditions of her workplace. EEOC Compl. Man., § 612.1(c), 2006 WL 4672691 (2006); *Threat v. City of Cleveland*, 6 F.4th 672, 677 (6th Cir. 2021). The low score on Sonmez's 2019 performance evaluation and resulting compensation penalty self-evidently qualify as actionable monetary discrimination. D.C. Code § 2-1402.11(a)(1)(A).

III. Defendants subjected Sonmez to a hostile work environment in violation of the DCHRA.

Sonmez was the victim of unwelcome harassment based on her two protected characteristics that was severe or pervasive, thus altering a term, condition, or privilege of her employment. *See, e.g.*, *Lively v. Flexible Packaging Ass'n*, 830 A.2d 874, 888 (D.C. 2003).[13]

Here, the sex- and status-based hostility that defendants' discrimination generated did not end with their discrete actions; instead, their conduct imbued

[13] Although defendants argued before the Superior Court that the conduct described above did not constitute severe or pervasive harassment, they did not move to dismiss the hostile work environment claim on the grounds that the conduct may not be imputed to the defendants, including the Post. In light of this forfeiture, we do not address why both bases of imputing liability for the harassment to the Post—negligence and vicarious liability—apply here.

Sonmez's everyday experience at work, causing her persistent anxiety and humiliation. As described above (at 27-40), defendants' actions were discriminatory, and they can also be used to evince a hostile work environment. *See Williams v. Gen. Motors Corp.*, 187 F.3d 553, 560 (6th Cir. 1999) ("A plaintiff may establish a violation of Title VII by proving that the discrimination based on sex created a hostile or abusive work environment."). The ban's reach was not clear or predictable. As a result, for each story Sonmez was assigned or news event she pursued, she had to steel herself for the moment a #MeToo connection might emerge and she might have to explain to her colleagues why she was stepping away. Defendants' ban forced Sonmez to remove herself—or be removed—frequently: at least once every one to two weeks over the ban's several-year span. JA46.

Beyond the ban, defendants also made their animosity towards Sonmez known by raising their voices (Ginsberg), JA23-24, chastising her in meetings (Grant), JA26, 34, and making sarcastic comments (Barr), JA33. Sonmez told supervisors in May 2020 that "just the knowledge that I am not seen by my editors as equal to my two teammates … is humiliating in itself." JA40.

This conduct was related to Sonmez's sex and status as a sexual-assault victim. "To establish that the harm was based on a protected status, a plaintiff 'must show that but for the fact of her [status], she would not have been the object of harassment.'" *Williams*, 187 F.3d at 565. As already shown (at 27-40), if not for Sonmez's sex and victim-status, she would not have been subject to the bans, JA21, 29, 31, 46, control over her personal social-media posts, JA24-26, 32-33, repeated accusatory inquiries into why she had not reported her assault to Beijing police or

"just [said] no," JA17, 22, and denunciations that she was an "activist" wanting to be the "star" of her assault, JA23, 33.

When analyzing whether a plaintiff has alleged the existence of a hostile work environment, "courts consider harassment by all perpetrators combined." *Williams*, 187 F.3d at 562. Here, "[t]he totality of the circumstances," which "of necessity, includes all incidents of alleged harassment," encompasses the harassment perpetrated against Sonmez by third parties online. *Id.*; *see also, e.g., Freeman v. Dal-Tile Corp.*, 750 F.3d 413, 423 (4th Cir. 2014) (third-party harassment may create a hostile work environment). The waves of sexist online harassment targeting Sonmez inflamed the hostile workplace atmosphere that defendants' conduct created. As previously explained (at 31), Sonmez's job required her to be on Twitter. Therefore, when she suffered severe online harassment by third parties, that harassment permeated her workplace. The harassment, indisputably based on Sonmez's sex and victim-status, was frequent and rife with discriminatory intimidation, ridicule, and insults, including rape and death threats, that were both objectively and subjectively hostile. *Daka, Inc. v. Breiner*, 711 A.2d 86, 93 (D.C. 1998). A reasonable person would find this harassment to be hostile and abusive, and its severity caused Sonmez to fear for her physical safety. JA36-37.

Taken together, the conduct—the third-party online harassment combined with editors' hostile behavior—was abusive, frequent, threatening, and humiliating. *See Daka*, 711 A.2d at 96; *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993). The harassment surpasses this Court's threshold because it consisted of more—in fact,

considerably more—than a few isolated incidents or trivial occurrences. *See, e.g., Nicola v. Washington Times Corp.,* 947 A.2d 1164, 1173 (D.C. 2008).

Finally, the hostile environment affected the "terms, conditions, or privileges" of Sonmez's employment. Sonmez suffered psychological harm because of this hostile environment, driving her to take time off because of symptoms of post-traumatic stress disorder. JA45. Anticipating the bans' unclear effects became part and parcel of Sonmez's work, repeatedly requiring her to remove herself from stories and explain why. JA46. Defendants exerted control over Sonmez's posts about her own assault and threatened that non-compliance could jeopardize her position, with Grant telling her on one occasion that any further posts "would potentially limit the stories" she can handle. JA26. In sum, the allegations demonstrate that the hostile environment unreasonably interfered with Sonmez's ability to do her job, exactly the kind of harm hostile-work-environment doctrine seeks to prevent. *See Harris*, 510 U.S. at 22.

IV. The Post retaliated against Sonmez.

To plead a retaliation claim, the complaint must have alleged that (1) Sonmez engaged in protected activity, (2) defendants took an adverse action against her, and (3) a causal link exists between the two. *Hamilton v. Geithner*, 666 F.3d 1344, 1357 (D.C. Cir. 2012). It did.

A. Sonmez engaged in protected activity.

The DCHRA makes it unlawful to retaliate against an employee who "has opposed any practice" of unlawful discrimination. D.C. Code § 2-1402.61(b).

Sonmez engaged in protected conduct by opposing the Post's discriminatory practices. The "opposition clause protects [formal] as well [as] informal protests of discriminatory employment practices, including making complaints to management, writing critical letters to customers, protesting against discrimination by industry or by society in general, and expressing support of co-workers who have filed formal charges." *See Sumner v. U.S. Postal Serv.*, 899 F.2d 203, 209 (2d Cir. 1990). Employees engaging in protected conduct are not required to say "magic words" to identify that they believe they are facing discrimination. *Howard Univ. v. Green*, 652 A.2d 41, 47 (D.C. 1994). All that is required is that an employee's complaint be related to their protected trait. *Id.* at 46.

Sonmez opposed the Post's bans as discriminatory. In an email to her supervisors, Sonmez explained that she felt discriminated against because of her sexual assault. JA23. A year later, after the Post instituted the second ban, Sonmez again opposed the ban for "the same reasons" as before. JA32. This opposition expressed more than a complaint "without connecting it to membership in a protected class." *See Vogel v. D.C. Off. of Plan.*, 944 A.2d 456, 464 (D.C. 2008). Following each ban, she complained that the Post discriminated against her based on her sex and status as a victim of sexual assault.

The lower court disregarded Sonmez's initial opposition to the first ban because victim-status was not yet a protected trait under the DCHRA. JA166. This reasoning is flawed on two accounts. First, to establish a cause of action for a retaliation claim, it is irrelevant whether an employer's conduct actually violated the DCHRA. Instead, as this Court explains, "[a]n employee is protected from retaliation even if

the employer's conduct alleged to be discriminatory is lawful, so long as the employee reasonably believed the employer's action was discriminatory." *See Propp v. Counterpart Int'l*, 39 A.3d 856, 863 (D.C. 2012). Second, as already shown (at 35-36), discrimination in response to a sexual assault *is* discrimination based on sex, so when Sonmez complained that she was being punished because of "what happened to [her] in Beijing," JA23, she was complaining of sex discrimination.

Sonmez also opposed the Post's refusal to allow her to protect herself from harassment by her abuser and his supporters. As explained above, (at 31), Twitter operates as part of Sonmez's workplace as a breaking news reporter. Therefore, when Sonmez refused to take down the pinned tweet she used "to protect" against "false statements" made about her on Twitter by her assailant's supporters, she was opposing a hostile work environment. JA32.

Sonmez also resisted the Post's unlawful attempt to punish her because of the disruption these abusers caused in her workplace based on her status as a survivor of sexual assault. As detailed earlier (at 28, 31-32), it is an "unlawful discriminatory practice" to discriminate against an employee because "[a]n individual caused a disruption at the employee's workplace." D.C. Code § 2-1402.11(c-1)(1)(C). Again, the misinformation being spread by her assailant and online abusers was the equivalent of an abuser denigrating her on the newsroom floor. *See supra* 31. In refusing to remove the tweet that served to protect her from this abuse, Sonmez put the Post on notice that she opposed defendants' discrimination against her based on the disruption this abuse caused at work. JA32.

B. The Post took adverse actions against Sonmez.

An employer's action is materially adverse when it "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Smith v. D.C. Off. of Hum. Rts.*, 77 A.3d 980, 993 (D.C. 2013) (quoting *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)). Defendants took at least five distinct adverse actions against Sonmez when they (1) instituted the second ban, (2) issued a written warning for violating the Social Media Policy with a threat of termination, (3) subjected her to increased scrutiny, (4) refused to provide protection or respond when Sonmez was being harassed and doxxed online, and (5) gave her a low 2019 performance review that reduced her pay raise. Even an employer's refusal to invite an employee to a training lunch may constitute actionable retaliation. *Burlington N.*, 548 U.S. at 69-70. So, it is an understatement to say that the Post's response to Sonmez's protected conduct might well dissuade a reasonable employee from engaging in protected activity and is therefore actionable.[14]

C. There is a causal link between Sonmez's protected activity and the Post's adverse actions.

A plaintiff need clear only a low hurdle to allege a causal link at the motion-to-dismiss stage. *See, e.g., Bryant v. District of Columbia*, 102 A.3d 264, 269 (D.C. 2014). "The causal connection between the protected activity and the adverse employment action can be established indirectly with circumstantial evidence, for

[14] These acts of retaliation are also used to state a cause of action under the DCHRA's discrimination provision. Where there is interrelated discrimination and retaliation, particular acts can "simultaneously support different types of [DCHRA] claims." *Baird v. Gotbaum*, 662 F.3d 1246, 1252 (D.C. Cir. 2011).

example, by showing that the protected activity was followed by discriminatory treatment." *Sumner v. U.S. Postal Serv*., 899 F.2d 203, 209 (2d Cir. 1990). The Post engaged in discriminatory treatment following Sonmez's protected activity.

The Post engaged in a pattern of antagonism. "[R]epeated, escalating acts of retaliation," such as "internal complaints"; "threats that [the employee] would be terminated"; and "formal action to reduce [her] duties" can constitute a pattern of antagonism supporting an inference of causation. *Payne v. District of Columbia*, 4 F. Supp. 3d 80, 90 (D.D.C. 2013) (vacated on other grounds). The Post has engaged in all of this conduct in response to Sonmez's protected activity.

Temporal proximity exists between Sonmez's protected activity and the Post's adverse actions. Temporal proximity between an employee's exercise of rights and the employer's alleged retaliation can alone be sufficient to plead causation. *Nicola v. Washington Times Corp.*, 947 A.2d 1164, 1175 (D.C. 2008). The Post issued the written warning and subjected Sonmez to increased scrutiny of her social-media activity two weeks after Sonmez refused to remove the pinned tweet that she used for protection and one month after Sonmez opposed the second content ban as discriminatory. JA31-32, 32, 33. After Sonmez received a negative rating on her first annual performance review following her oppositional conduct in 2019, defendants told Sonmez her earlier protected activity was the reason for the lowered rating. JA39, 40. The Post failed to provide security when Sonmez received death threats online less than three months after she refused to remove the pinned tweet. JA32-33, 35-37.

The Post treated Sonmez differently after her protected conduct. "[W]here an employer treats an employee differently after she asserts her rights … than before she had done so, a retaliatory motive may be inferred." *Cantrell v. Nissan N. Am., Inc.*, 145 Fed. App'x. 99, 105-06 (6th Cir. 2005). Prior to Sonmez's protected activity, defendants supported Sonmez and encouraged her public statements about her assault. JA17-18. It was not until Sonmez complained that the first content ban was discriminatory that the Post engaged in a pattern of antagonism. JA22-24.

Conclusion

This Court should reverse the Superior Court's judgment on all of Sonmez's DCHRA claims and remand for further proceedings.

Respectfully submitted,

/s/Madeline Meth

Molly Bernstein
Elliott O'Brien
Jewelle Vernon
Student Counsel

Madeline Meth
Brian Wolfman
Esthena L. Barlow
GEORGETOWN LAW APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave. NW,
Suite 312
Washington, D.C. 20001
(202) 661-6582
madeline.meth@georgetown.edu

Counsel for Plaintiff-Appellant Felicia Sonmez

October 14, 2022

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
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     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

Madeline Meth
Signature

22-CV-0274/22-CV-0301
Case Number(s)

Madeline Meth
Name

October 14, 2022
Date

madeline.meth@georgetown.edu
Email Address

Certificate of Service

I certify that, on October 27, 2022, this brief was filed via the Court's e-filing system. All participants in the case are e-filers and were served electronically via that system with a copy of this brief.

/s/Madeline Meth
Madeline Meth

Counsel for Plaintiff-Appellant/Cross-Appellee